IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 41 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JASWANT DUDHABHAI GOHIL - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
Mr.L.R.Poojari, A.P.P. for Opponent(s) : 1,
MR YN RAVANI for Opponent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/09/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order of conviction and sentence dated 15th December, 1988 passed by the learned Special Judge (C.B.I.) at Ahmedabad

in Special Case no.3 of 1987 whereby the appellant-accused Jashwant Dudhabhai Gohil was sentenced to undergo R.I. for a period of one year for the offence punishable under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (“the Act” for short) and to pay a fine of Rs.2500/-, in default to undergo R.I. for three months. He was also sentenced to undergo R.I. for one year and to pay fine of Rs.2500/- for the offence punishable under Section 161 of the Indian Penal Code (“ the Code “ for short), in default, to undergo R.I. for three months. Both the substantive sentences were also ordered to run concurrently.

2. Briefly stated, the facts of the case giving rise to this appeal may be enumerated as under:

3. The complainant Prafulbhai Parshottambhai Patel, at the relevant time, was serving as a Foreman in a factory situated at G.I.D.C. Makarpura, Baroda, and was residing with his father Parshottambhai Desaibhai Patel at village Latipura, Taluka Padra in Baroda. According to the complainant, his father was holding two agricultural fields, in one of which there was a well. There was an underground pipe line connecting the other field with the said well which was passing from below/side of the

Railway line from Jambusar to Dabhoi. Since the roots of a tamarind tree that grew up above the said pipeline had expanded and caused damage to the pipeline, water was oozing out. Therefore, after obtaining permission from the Forester Mr. Rana the tamarind tree was got cut off and the pipeline was also got repaired. In this connection, the accused called the complainant's father Parshottambhai Desaibhai Patel at Latipura Railway Station and told him that as he had committed a serious offence of cutting off the tamarind tree, he would have to be arrested. Parshottambhai Desaibhai Patel then explained to the accused the circumstances under which the tamarind tree was got cut off, but the accused demanded illegal gratification of Rs.5000/-from Parshottambhai for avoiding a case in that regard. After some persuasion, Parshottambhai Desaibhai Patel paid Rs.2000/- to the accused in the presence of one Mahendrabhai Motibhai Patel on that very day on 18th September, 1986.

4. Thereafter, on 19th September, 1986 Shri Parshottambhai Desabhai Patel received a note addressed by the accused to Shri Kiritbhai Parshottambhai Patel s/o Shri Parshottambhai Desabhai Patel calling upon them to see the accused in the train arriving at Latipura

Railway Station on 20th September,1986 in the morning at 9-00 O'Clock from Jambusar. Accordingly, Parshottambhai Desaibhai Patel, his son Prafulbhai Parshottambhai Patel and one Mahendrabhai Motibhai Patel came to Latipura Railway Station at the said time and saw the accused on the said train. At that time, the accused demanded the remaining amount of Rs.3000/- by way of illegal gratification from Parshottambhai Desabhai Patel and told him to make arrangements within half an hour, otherwise, to face the case for removal of the tamarind tree. Later on, at 11-00 O Clock in the morning of 20th September, 1986 the accused saw Purshottamdas Desabhai Patel and again demanded Rs.3000/- to which Parshottambhai Desabhai Patel replied that he could not make arrangement immediately and under the pretext of making arrangement for the demanded amount, the complainant Prafulbhai Parshottambhai Patel accompanied with Mahendrabhai Motibhai Patel approached the Anti Corruption Bureau and lodged his complaint against the accused for having demanded bribe in respect of the removal of tamarind tree. Accordingly, a trap came to be laid by the A.C.B. Officer at about 4-00 to 4-45 p.m. on 20th September, 1986. The accused demanded the remaining amount of Rs.3000/-from the complainant Prafulbhai Parshottambhai Patel which he gave and the accused was caught having

accepted the said amount. On the same day i.e. on 20th September, 1986, search was also carried out at the residential place of the accused at Jambusar and Rs.2000/- came to be seized from there. The ACB Officer on completion of investigation,having found that the appellant-accused is a Central Government employee, transmitted the investigation papers to the C.B.I. who after further investigation obtained necessary sanction and filed charge-sheet before the learned Special Judge. The learned Special Judge framed charge Exh.19 against the accused on 20th January, 1986 for the offences punishable under Sec 161 of the Indian Penal Code and under Section 5(2) read with Section 5(1)(d) of the Act. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried.

5. To prove its case against the appellant-accused the prosecution has examined – (1) PW 1 Pushpa Vadan B.Dave at Exh.25, (2)PW 2 Prafulbhai Parshottamdas Patel at Exh.36, (3) PW 3 Mr.Pradip Kumar Tarachand Mittal, Additional Permanent Way Inspector, at Exh.39, (4) PW 4 Harishanker Munsilal Sharma, Inspector, R.P.F. at Exh.44, (5)Parshottambhai Desabhai Patel, at Exh.50, (6) PW 6 Mr.Amarsinh Mohanlal Yadav ACB Inspector, at Exh.53, and

(7) PW 7 Mr. M.K.Sharma, C.B.I. Inspector, at Exh.58. The prosecution has also produced documentary evidence such as complaint Exh. 37, sanction order Exh.21,written statements of the accused 46 and 49, written explanation of the appellant-accused Exh.61, statement of Kiritbhai Exh.39, Panchnama Exh.26, note Exh.30, seizure memos Exhs. 31 and 32 , daily dairy Exh.22, letters Exhs.27, 28,41 and 42 etc. After recording the evidence of prosecution witnesses was over, the accused was further examined. The accused had submitted his written explanation at Exh.61.The sum and substance of the written explanation of the accused is to the effect that he was falsely implicated in the case.

6. On appreciation, evaluation, analysis and scrutiny of the evidence adduced by the prosecution both oral as well as documentary, the learned Judge of the trial Court held that the prosecution has established beyond reasonable doubt that the appellant-accused did demand the bribe money of Rs.5000/-from Parshottamdas-father of the complainant on 18th September,1986 and thereafter reduced the amount to Rs.2000/- and that the complainant paid Rs.2000/- on that day to the appellant-accused. The appellant again demanded the remaining amount of Rs.3000/- on 20th September, 1986 from the complainant

which amount also the complainant paid to the appellant-accused. Thus, the appellant did accept the total amount of bribe money of Rs.5000/- from the complainant, and therefore, held the appellant-accused guilty of offence with which he was charged and passed the judgment and order of conviction and sentence, giving rise to the present appeal.

7. I have heard the learned Counsel Mr. K.J.Shethna for the appellant-accused, learned A.P.P. Mr. Poojari for the respondent no.1-State and learned Counsel Mr. Y.N.Ravani for the respondent no.2 at length and in great details and have also perused the record with due care and caution.

8. Learned Counsel Mr. K.J.Shethna after having taken me through the entire evidence on record as also the reasons assigned and conclusions reached by the learned Special Judge, submitted that the whole case of the prosecution is improbable and prayed that the appeal be allowed and the order of conviction passed by the learned Special Judge be set aside and the appellant-accused be acquitted of the offence in question. In support of his submission, he has raised several contentions. Before I could proceed to deal with the submissions, I may state

that since I am in complete agreement with the views expressed by the learned Special Judge, I do not deem it necessary to reiterate the evidence of all the witnesses in great details and burden the record, but would only discuss the evidence and documents as are necessary for disposal of this appeal on merits.

9. The learned Counsel has firstly submitted that the appellant-accused could not have demanded such a huge amount of Rs.5000/-, he being a poor Constable and that under the instigation or as per instructions received from his Superiors the appellant-accused might have obtained the amount on their behalf. It is also his submission that the appellant-accused could not have demanded the bribe amount in presence of Inspector or Sub-Inspector. Going through the deposition of Mr. Parshottambhai Desabhai Patel Exh.50 and Prafulbhai Parshottamdas Patel, Exh.36, it is found that prior to the removal of tamarind tree,Parshottamdas had a talk with Kadam who happened to be the Station Master at Latipura Railway Station at the relevant time but designated as Assistant Coaching Clerk; that he was advised to contact the Forest Officer Mr.Rana and accordingly after receiving permission from Mr. Rana, Mr. Kiritbhai and Mr.Parshottamdas got the tree cut on 16-9-1986 as it was damaging the pipeline. The pipe line was

also got repaired on 17-9-1986. This action on the part of Kiritbhai and Parshottambhai appears to be quite natural and with bona fide intention to repair the pipelines for getting water in their field, especially when, in the statement of Kiritbhai which bears the endorsement of the Sarpanch, there is a mention with regard to removal of tamarind tree and obtaining of permission from the Forest Officer. In continuation of this event, as per the deposition of Parshottamdas Exh.50 on 18th September, 1986 when he was at the well in his agricultural field in the morning, Mr. Gohil, the accused asked him (Parhsottamdas) to meet him at Latipura Railway Station and accordingly, he had been there at 11.00 a.m. Mr. Gohil then questioned him as to who had cut the tamarind tree to which Parhsottamdas replied that his son Kiritbhai had cut the tree, and therefore, Kiritbhai was also called. Upon arrival of Kirtibhai, Mr. Gohil took both of them to the house of Sarpanch where statement of Kirtibhai was recorded by Mr. Gohil wherein Kiritbhai had put his signature. Mr. Gohil then told Parshottamdas that a serious offence has been committed by cutting off a green tree and suggested that if he pays Rs.5000/-no case would be filed, however, after some persuasion Mr. Gohil suggested that Rs.2000/- be paid. Out of coercion and with a view to avoid prosecution,

Parshototamdas went home and returned to the Railway Station accompanied by Mahendrabhai Motibhai Patel and paid the amount of Rs.2000/- to the appellant-accused which was accepted by the appellant-accused. According to this witness, all the currency notes were of the denomination of Rs.50/- Again, if we look at the documents Exh.29-statement of Kiritbhai recorded by Mr. Gohil,the appellant and note/chit Exh.30 written by the appellant-accused asking Parshottamdas/Kiritbhai to remain present at Latipura Railway Station on 20th September, 1986 and when Mr.Parshottamdas, his son Prafulbhai and Mahendrabhai Motibhai Patel met the appellant-accused in the first class compartment of the train at Latipura Railway Station, the appellant had demanded the remaining amount of Rs.3000/-as bribe money and gave half an hour's time for arranging the amount as otherwise, case would be filed. Accordingly, Mr. Gohil, the appellant-accused met the complainant-Prafulbhai, Parshototamdas and Mahendrabhai at 11.00 a.m. on that day, however, Parshottamdas expressed his difficulty to arrange for such huge amount. The appellant-accused insisted. Thereafter, it was decided by Parshottambhai, Mahendrabhai and Prafulbhaia to file a complaint with the Anti Corruption Bureau, and therefore, under the pretext of going to arrange the amount, Prafulbhai and

Mahendrabhai first went to the house of Mahendrabhai, took Rs.3000/- i.e. sixty currency notes of the denomination of Rs.50/-each and went to the ACB Office at 12.00 O'Clock while the father of the complainant Parshottamdas remained with the appellant-accused at Latipura Railway Station. At the ACB Office on 20-9-1986, Inspector Mr. Yadav recorded the complaint (Exh.37) narrated by Prafulbhai which was completed at 1.30 p.m. and obtained his signature. As directed by Inspector Mr. Yadav two Panchas, namely, Mr.Pushpavadan Dave and Mr. Narsinbhai Vankar were summoned by PSI Mr. Khant. The two Panchas were introduced and Inspector Mr. Yadav also gave his introduction to them. As the Panchas were ready to act as Panchas, the contents of the complaint were read over and explained to them. The complainant-Prafulbhai also narrated the facts of his complaint in presence of Panchas. Inspector Yadav then asked the complainant to produce the amount. Thereupon, the complainant gave the aforesaid amount of Rs.3000/- consisting of sixty currency notes of the denomination of Rs.50/-each. The numbers of these currency notes were mentioned in the Panchnama. PSI Khant then showed these currency notes in ordinary light, electric light as well as under ultraviolet lamp, but nothing significant was visible. The Panchas were then given to understand the use of

anthracene powder on the currency notes in a trap and he also held demonstration. The currency notes when smeared with anthracene powder and seen under ordinary light nothing significant appeared, but when these currency notes were viewed under ultraviolet lamp light blue shining colour appeared. Similar experiment was also conducted on the hands of PSI Khant who conducted the experiment of anthracene powder on the currency notes by applying anthracene powder and light blue shining colour appeared on the palms and fingers of both his hands. The person of Prafulbhai was then searched by Panch no.1 Pushpavadan Dave under the instructions of Mr. Yadav. PSI Khant then placed the Muddamal currency notes of Rs.50/- each sixty in number in a bundle aggregating Rs.3000/- in the right pocket of Prafulbhai which was found empty and instructed him not to touch the same until demand is made by Mr. Gohil while an amount of Rs.21/- in two notes of Rs.10/-each found from the left pant pocket of Prafulbhai were put back into that pocket. Thereafter, both the hands of PSI Khant were washed with soap and water. Then the hands of PSI Khant, Prafulbhai, both the Panchas and all the members of the raiding party were seen under ordinary light, electric light as well as ultraviolet lamp and no marks of anthracene powder were visible. The remaining anthracene powder was put back into the bottle

and the paper used for smearing the currency notes with anthracene powder was also destroyed by burning. The complainant Prafulbhai was then instructed not to touch the Muddamal currency notes until demand is made and willingness is expressed by Mr. Gohil–the accused to accept the amount and that when the money is accepted by Mr. Gohil, he should give signal by moving his left hand over his head. Panch no.1 Mr. Dave and Mahendrabhai were instructed to remain with Prafulbhai and to see and hear the conversation between Gohil-the accused and Prafulbhai. Panch no.2 Narsinbhai Vankar and all the members of the raiding party were instructed to hide themselves at the Latipura Railway Station and upon receiving the signal to reach the place of incident. Thus, the preliminary Panchnama was drawn at the ACB Office. Accordingly, all of them reached Latipura at 4.00 O'Clock on 20-9-1986 by Government Jeep. Prafulbhai, Mahendrabhai and Panch no.1 Mr. Dave proceeded to Latipura Railway Station and Inspector Mr. Yadav followed them while Panch no.2 and PSI Mr. Khant and other members of the raiding party positioned themselves behind the compound near Latipura Railway Station. At that time, Mr. Gohil was sitting on the bench facing the railway line and on the bench to the opposite side towards Latipura village Prafulbhai's father Parshottamdas was sitting ,

so also, the Station Master. On Seeing Prafulbhai, Mr. Gohil went towards him, told him that everything was over and enquired of him about the money. Prafulbhai sought some reduction in the amount, but Gohil-the accused insisted that the amount agreed upon be paid over to Narsinbhai Porter. Gohil tried to call Narsinbhai by giving signal but Narsinbhai was not attentive and did not come. Prafulbhai then suggested that Gohil may accept the amount and not file the case. Gohil-accused then took Prafulbhai-complainant to Station Master's Office. At that time Panch no.1 Mr. Dave and Mahendrabhai were with Prafulbhai. The Station Master was sitting on the Bench in the waiting shed. Panch no.1 Mr. Dave stood near the door of the Station Master's Office. After entering the Station Master's Office, Mr. Gohil extended his right hand towards Prafulbhai who took out the tainted Muddammal currency notes and handed over the same to Mr. Gohil. Mr. Gohil accepted the said currency notes with his right hands, opened the drawer of the table lying there with his left hand and placed the Muddamal currency notes inside the drawer with his right hand. When Mr. Gohil closed the table drawer, Prafulbhai went outside and gave the signal. Soon Inspector Mr. Yadav reached the Station Master's Office who then instructed Mahendrabhai to signal the persons of the raiding party and disclosed

his identity to the appellant-accused. Mr.Khant, other persons of the raiding party and Panch no.2 Mr. Narsinbhai Vankar came there. Thereafter when asked Mr. Gohil disclosed his identity as well as his position in the R.P.F. and Mr. Yadav also introduced the members of the raiding party and both the Panchas to Mr. Gohil. Thereafter the hands of both the Panchas and all other members of the raiding party except that of Prafulbhai and Gohil were viewed under ultraviolet lamp and nothing significant was noticed. Then, the hands of Mr. Gohil-the accused was shown in ordinary light and nothing significant appeared, but when his hands were viewed under ultraviolet lamp, light blue shining colour was seen on the tips of the fingers and thumb of the right hands of Gohil-the accused. Inspector Yadav asked Mr. Gohil about the bribe money. At that time, Panch no.1 Mr. Dave told that the Muddamal currency notes were in the left drawer of the table in the Station Master's Office. Thereupon, the handle of the said drawer was viewed under ultra violet lamp but no trace or marks of anthracene powder were noticed. Panch no.1 Mr. Dave then under the instruction of Mr. Yadav opened the said drawer wherein Muddamal currency notes of Rs.50/-each in a bundle were visible. These currency notes were there and then viewed under ultraviolet lamp and shining blue colour was

noticed. Mr. Yadav then instructed Mr. Dave Panch no.1 to take the Muddamal notes from the drawer. The numbers of these currency notes when tallied with the numbers mentioned in the first part of the Panchnama were found to be the same. Thereafter, the place inside the drawer where the tainted currency notes were actually found was viewed under ultraviolet lamp and light blue shining colour was seen there. That portion of the brown paper was marked with ball-pen ink with a circular sign. Then slips bearing the signature of the Panchas were placed with the Muddamal currency notes and the brown paper. Panch no.1 then counted the currency notes and his hands when viewed under the light of ultraviolet lamp, light blue shining colour appeared on the fingers, thumbs and the palms of this Panch witness. Then the right pocket of Prafulbhai's pants was viewed under ultraviolet lamp and light blue colour appeared on the corner of the pocket. On search by Panch no.2, the aforesaid Rs.21/-were found from the left pocket of the pants worn by Prafulbhai, which were put back into that pocket itself. Thereafter, on search of the person of Mr. Gohil, one lighter one identity card and three other papers and Rs.267/-were found from the purse with chain that lay in his shoulder bag. The particulars of all these items were noted down in the Panchnama, and the three papers (Exhs.27,28 and

29) were seized with the signature of the Panchas while the amount of Rs.267/-was allowed to remain with Mr. Gohil. Parshottamdas was then asked to produce the note/chit Exh.30 that was written by Mr. Gohil which was also seized with the signatures of the Panchas. Receipts were issued to Mr. Gohil for the items seized and the carbon copy of the seizure memo is at Exh.31. Exh.32 is the seizure memo for the seizure of note/chit Exh.30 from Parshottamdas. Thus, the second part of the Panchnama (Exh.26) was completed. Thus, the meeting of the complainant and Mr.Gohil-the accused at Latipura Railway Station unto the stage of completion of the trap incident at the Station Master's Office is as per the evidence of the two witnesses Prafulbhai-complainant and his father Parshottamdas and their evidence is consistent in material particulars and they have given almost similar version. Analyzing their evidence following facts emerge – (i) the fact of initial demand has been proved through the evidence of the complainant, PW 2 at Exh.36 which is supported by his complaint Exh.37 (ii) It is further supported by the conduct of the complainant and his father Parshottam in admitting that the tree was cut down by Kiritbhai and their having informed the police and filed complaint. The complainant also went to the appellant-accused with the bribe money and approached the

appellant-accused on the trap day (iii) the fact of initial demand gets further support from the evidence of the complainant that on the trap day when he in the company of the first Panch met the appellant, the appellant inquired of him, if he had brought the money. On this point even Panch no.1 has supported the evidence of the informant. (iv) As regards the evidence of demand of bribe money on the date of trap, there is evidence of the complainant, the first Panch, the complaint and Panchnama. (v) The evidence of consequent recovery of bribe money further supports the case and evidence of pre-trap demand and trap day demand. (vi) the evidence of acceptance can be gathered from the evidence of complainant, complaint and Panchnama (vii) the evidence of recovery of bribe money further supports the case and evidence of demand and acceptance. (viii) The fact of recovery of bribe money is proved in records through the evidence of complainant, Panch no.1, I.O Mr. Yadav, complaint, Panchnama, presence of anthracene powder on the right pocket of the pants worn by the complainant, on the tips of the fingers and thumb of the appellant-accused and on the portion of the paper in the drawer of the table in the Station Master's room where the currency notes were placed by the appellant-accused. (ix) the evidence that the appellant-accused tried to put pressure

on the complainant's side by recording statement of Kiritbhai to the effect that the tamarind tree was standing within the Railway limits and threatening given with regard to filing a case. (x) Demand of Rs.3000/-had been witnessed by Panch no.1 Mr. Pushpavadan Dave who was standing near the door of the Station Master's Office at the relevant time, (xi) the amount of Rs.3000/- is accepted in privacy by taking Prafulbhai to the Station Master's Office. (xii) the fact of initial demand of Rs.5000/- and acceptance of Rs.2000/- on 18-9-1986 was informed by the witness to his son Prafulbhai at night and the recovery of this amount from the residence of the accused vide seizure memo Exh.34 and Panchnama Exh.33 is proved through the evidence of Panch no.1 Pushpavadan Dave at Exh.25. Although there is no evidence to show that these currency notes recovered from the house of the accused were the same that Parshottambhai had given, this being an initial demand and acceptance, the numbers of these notes could not have been noted down by Parshottamdas. However, the prosecution evidence is found to be consistent and is probabilised so far as the recovery of Rs.2000/- is concerned as there is link with the earlier incidents as also the events that had taken place on 20-9-1986 as discussed above, (xiii) the conduct of Parshottamdas and his son Kiritbhai having found to

be quite natural and bona fide in cutting of the tamarind tree and repairing the pipelines after taking advise and oral permission from the respective officers, (xiv) the complaint Exh.37 and the seizure memos Exhs.31 and 32 as also the documents Exhs.29 and 30 all bear testimony to the fact of initial as well as subsequent demand and acceptance. The complaint also reflects that the complainant was not willing to give the bribe but due to coercion and compulsion the bribe amount was given and as such the complainant cannot be termed as an accomplice, and (xvi) the Panchnama Exh.26 is found to be authentic and reliable. Panch no.1 Pushpavadan Dave has fully supported the prosecution version which is reflected in Panchnama Exh.26. Even in cross-examination this witness stands firm on the material part of his deposition and the lengthy cross-examination did not shake his testimony.

10. In the instant case, it is worthwhile to note that the complainant, despite lengthy and searching cross-examination has not at all been shaken on the substantive part of the evidence regarding the accused having initially demanded Rs.5000/- and accepted bribe of Rs.2000/- on 18-9-1986 in presence of Mahendrabhai and again demanded the remaining amount of Rs.3000/- on 20-9-1986 and accepted the amount of Rs.3000/-on that day as

well and also the fact that the accused having met Parshottamdas and Prafulbhai-the complainant on the respective dates. It is also material to note that the authenticity of the complaint Exh.37 stands established from the deposition of Panch no.1 Pushpavadan Dave at Exh.25 wherein he has in clear terms deposed that the complaint (Exh.37) was read over and explained to him and the other Panch and they have put their signatures thereon, that the complainant has also affirmed before them that the contents of the complaint are correct by narrating the complaint in brief. The first part of the Panchnama also reflects this fact. In the present case the evidence of complainant-Prafulbhai and his father Parshottamdas is consistent, the complaint Exh.37 recites almost the similar version given by the complainant in his evidence and the evidence of these two witnesses is fully corroborated by the evidence of Panch no.1 Pushpavadan Dave and to a great extent by Inspector Mr.Yadav as well. In addition to this on a careful reading of the documents Exhs.27, 28, 29, 30, 42, 43, 47, they stand proved by the deposition of Prafulbhai Exh.36 and Parshottamdas Exh.50. for the following reasons – (a) tamarind tree is cut by Mr. Kiritbhai (b) Railway Protection Force commenced investigation (c) Mr. Gohil-the accused recorded statement of Kiritbhai son of

Parshottamdas at the place of Sarpanch, (d) on 19-9-1986 Mr. Mittal wrote a memorandum as there was suspicious closure of cases by Mr. Gohil, (e) initially complainant was called at Latipura Police Station on 20-9-1986 at 11.00 O'Clock by the accused, but after receiving the letter from Mittal , the accused changed the time of complainant from 11.00 a.m. to 8.45 a.m., (f) the investigation report given by the accused on 18-9-1986 is in English and the initials on it is admitted by the accused which shows the accused alone had conducted the investigation. If Mr. Pande was a party to the investigation, he would have written and signed the report in English as Mr. Pande knows English and there is no explanation coming forth from the accused as to why Pande had instructed him to make the report. In the present case, therefore, demand, acceptance and recovery is coupled with positive evidence supported by various documents and circumstances making the chain complete and there is no missing link in the chain of events, pointing to the guilt of the appellant-accused. I am also conscious of the fact that the appellant-accused had tendered his written explanation Exh.61, however, I find that the defence of the appellant accused is on the whole an afterthought and does not adversely affect the case of the prosecution.

11. Considering the aforesaid aspects, it can be concluded that the prosecution has satisfactorily proved through cogent and convincing evidence that the appellant initially demanded Rs.5000/- on 18-9-1986 from Parshottamdas, and thereafter reduced the amount to Rs.2000/- which was paid to him by Parshottamdas-father of the complainant due to compulsion as the appellant-accused threatened to file a case, and again on 20-9-1986 the appellant-accused again demanded illegal gratification from the complainant-Prafulbhai, that the unwilling complainant did pay the same to the appellant-accused, that the appellant did accept the same from the complaint and the said bribe money was recovered from the drawer of the table where he had placed the same after receiving the same from the complainant. Therefore, when the facts of demand, acceptance and recovery have been established beyond reasonable doubt, the prosecution has to be held to have proved that the appellant-accused received the moneys in question as an illegal gratification that was not his legal remuneration and which he was otherwise not entitled to receive, meaning thereby, that the prosecution has become statutorily entitled to the presumption under Section 4(1) of the Act. It may be noted here that in fact the evidence of Parshottamdas only creates a cloud of doubt with regard

to presence of Inspector Mr. Pande at the Station Master's Office but does not show that any meeting had taken place between the complainant or Parshottamdas with Mr. Pande/ Mr. Harishankar Sharma, and therefore, there is also no question of the bribe amount having been accepted in presence of higher officers as their presence is not established. Even the presence of Mahendrabhai at the time of initial demand is accidental and quite natural as he is a person of the village, and therefore, the accused had no fear of demanding and accepting bribe from the complainant in his presence.

12. The learned Counsel next submitted that the names of other accused persons though specifically mentioned before the Investigating Officer, CBI, none of them were joined as accused, and therefore, also the appellant-accused is entitled to the benefit of doubt. For the sake of argument, even if we believe that other persons are involved with the present appellant-accused in committing the crime, that by itself cannot be a ground for exonerating the appellant-accused from his liability when the prosecution has proved its case beyond reasonable doubt against the appellant-accused.

13. The learned Counsel Mr. Shethna next argued that there are major contradictions between the deposition of witnesses and the police statement which, according to

him, is fatal to the case of the prosecution. According to him, the learned trial Judge has not considered this aspect, and thereby, committed error in convicting the appellant-accused. There are various factors on account of which contradictions creep in the evidence of witnesses. In the present case, there has been double investigation. Firstly, statement of witness Parshottmdas-father of the complainant came to be recorded by Inspector Mr. Yadav and subsequently after one and a half month from the date of incident, Investigating Officer, CBI, Mr. Sharma recorded the statement of this witness. It is not disputed that this witness is aged 72 years and minor contradictions are bound to occur. In the present case, some contradictions here or there are not touching the root of the case, and therefore, these contradictions are required to be overlooked as being minor contradictions and not material contradictions. Even otherwise, the statement recorded first in point of time has to be given preference and weightage. Not only that, as discussed earlier, the natural course of events as disposed to by the prosecution witnesses are not affected from the statements made before Investigating Officer, CBI, Mr. Sharma. In that view of the matter, simply because there are some minor contradictions between the evidence of

witnesses and their police statements, it would not be a ground for rejecting the evidence of the witnesses whose evidence is otherwise found to be reliable. This is more so when the evidence of the witnesses corroborate each other and when their evidence is further supported by documentary evidence like Panchnamas, seizure memos, complaint and evidence of Panch witness.

14. The learned Counsel next argued that as staff of the Railway Protection Force are mainly from other State and not from Gujarat and as the statements etc. are required to be recorded in Gujarati, the present appellant-accused who knows Gujarati had played the role of Writer. According to him, at the instance of Officer Mr. Pande, he simply recorded the statement of Kiritbhai- brother of the complainant, and therefore, merely on the basis of this statement, presumption cannot be drawn that to bring pressure on Parshottamdas and to extract money from him with that motive the statement was recorded by the appellant-accused. This submission is not worthy of acceptance as it was open to the Railway Protection Force to ascertain whether the pit where the tamarind tree was standing was within the Railway boundary or not instead of straightaway recording the statement of Kiritbhai . On the contrary as per the evidence of Pradip Kumar Tarachand Mittal(Exh.39), it is an admitted fact that no

measurement at the site was taken for the said purpose and except recording the statement of Kiritbhai in the form of a confessional statement to the effect that the tamarind tree was standing within the railway limits without ascertaining the correct facts, nothing further has been done. Even the complaint Exh.37 refers to the existence of the tamarind tree outside the Railway limit, and therefore, it becomes clear that the statement of Kiritbhai was recorded by the appellant-accused for pressurizing the complainant's side is justified.

15. The learned Counsel next argued that Exh.30 the note/chit was written by the appellant accused to call the brother of the complainant with his father to meet him (appellant) the next day at 8.45 a.m. to take measurement by one Railway Officer Mittal in presence of the owner of the land(complainant). In support of his argument, he also stated that this version totally corroborated with the Yadi sent by the accused to the said Mittal to see him personally. According to the learned Counsel, if the present appellant-accused had any malafide intention, he could not have sent the Yadi. Upon close perusal of Exh.30, the note/chit, it is crystal clear that the brother and father of the complainant were called at 11-00 O'Clock in the morning of 20-9-1986 at Latipura Railway Station while Officer Mr. Mittal was

called at Vishwamitri Police Station for the purpose of recording his statement at 10.00 hrs in the morning of 20-9-1986 vide Exh.28 written by the accused himself. It is interesting to note that the appellant accused started his journey from Jambusar in the morning by train to reach Pratapnagar and in the evening, he returned back to his home at Jambusar. It is an admitted fact that after leaving Jambusar, Vishwamitri Railway Station comes in the way and thereafter Latipura Railway Station. It is to be noted that Mittal replied by letter to the accused that in pursuance of Yadi sent by the appellant-accused, he will see him (appellant) at Latipura Railway Station, but if he will miss the train, then, in that case, he will meet the appellant at Vishwamitri Railway Station. The present appellant was travelling by train and it was within his knowledge that Mittal had not come in the train. In spite of that, instead of going to Vishwamitri/Pratapnagar Railway Station, he came to Latipura Railway Station that clearly shows the intention of the appellant-accused that he did not want Mr. Mittal to see the complainant or the owner of the land. Under these circumstances, the only inference that can be drawn against the appellant-accused is that he wrote note/chit Ex.30 only with an ulterior motive to demand the remaining amount of bribe money of Rs.3000/- from the

complainant. Apart from that, it has come out in the evidence of Mr. Mittal that he had reached Vishwamitri Railway Station by road and waited for the appellant-accused up to 2.00 p.m., and thereafter, he left Vishwamitri Railway Station. There is, therefore, no substance in this argument of the learned Counsel as well.

16. The learned Counsel next argued that while accepting the amount of Rs.3000/-, the appellant-accused had not counted the amount. This contention has to be stated merely for being rejected for the simple reason that a person who is accepting bribe money would only want the transaction to be completed in haste and would not count the amount as it is not a legal amount.

17. The learned Counsel next argued that the appellant accused could not have waited at Latipura Railway Station for a very long time. It is important to note that the father of the complainant had also remained with the appellant-accused all the time as the appellant-accused is stated to have given time for procuring the bribe amount of Rs.3000/- when the complainant expressed his difficulty in arranging such huge amount. This conduct on the part of the appellant-accused is quite natural and probable as the amount in question is sufficiently huge and the appellant-accused out of greed for money would

naturally wait in order to strike the deal.

18. The learned Counsel next argued that important witnesses Mahendrabhai, Kadambhai, Kiritbhai etc. are not examined by the prosecution with an oblique motive, and therefore adverse inference should be drawn against it. There is no force in this submission of the learned Counsel as Mahendrabhai and Kiritbhai if examined would have been labelled as interested witnesses and the other witnesses could not have thrown any light so as to discard the prosecution evidence, especially when, there are sufficient written and documentary evidence in support of the prosecution case together with the consistent, reliable and trustworthy depositions of witnesses Parshottambhai, Prafulbhai, Panch no.1 Mr. Dave and Mr. Mittal.

19. The learned Counsel finally submitted that if the Court is not inclined to allow the appeal, a lenient view be taken on the quantum of punishment. He has stated that the appellant-accused is 65 years of age; that at present he is working in a cloth store and earning Rs.1000/-per month; that he is not keeping good health and suffers from high blood pressure; that due to paralytic attack in the year 2002 there is 40% defect in his right hand; that his wife aged 62 years is doing the work of cleaning utensils in houses and earning Rs.500/-

per month.

20. As against that the learned Counsel for the respondent no.2 Mr. Y.N.Ravani as also the learned A.P.P. Mr. Poojari for the respondent no.1-State has submitted that the prosecution has successfully established the case of demand and acceptance of the illegal gratification by the appellant-accused from the complainant through the trustworthy and reliable evidence of complainant and his father Parshottamdas which is fully corroborated by the testimony of independent Panch witness and the documentary evidence in the form of seizure memos Exhs.31 and 32, complaint Exh.37, Panchnama Exh.26, the three papers sized from the appellant-accused Exhs.27, 28, 29 and the chit written by the appellant-accused Exh.30. According to them, the learned Special Judge is perfectly justified in passing the judgment and order of conviction and sentence against the appellant-accused.

21. At this stage mention requires to be made that I have not only perused the reasoning assigned by the learned Special Judge but also cross-checked the reasoning with the evidence on record and am satisfied that the reasoning recorded by the learned Special Judge in the impugned judgment are consistent with the evidence

on record.

22. Thus, on consideration of the totality of the entire case, I do not find any merit in the submissions made on behalf of the appellant-accused. In my view, no interference is called for in the impugned judgment so far as conviction of the appellant-accused is concerned, and consequently, I uphold the impugned judgment so far as conviction of the appellant-accused is concerned.

23. In view of the foregoing discussion, the charges levelled against the appellant-accused under Section 161 of the Indian Penal Code as well as under Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act, 1947 stands proved beyond reasonable doubt. The charge under Section 161 stands proved in view of the presumption being attracted under Section 4 of the said Act.

24. In the result, the appellant-accused is found guilty of an offence punishable under Sec.5(2) read with Section 5(1)(d) of the said Act and Section 161 of the Indian Penal Code. I am fortified in my view by the judgment rendered in the case of M.Narasinga Rao v. State of Andhra Pradesh reported in 2001 (1) Crimes 79 (SC) relevant Paras 12 and 13 and (2) State of M.P. v. Shambu Dayal Nagar reported in (2006) 8 SCC 693 relevant para 28, and (3) State CF A.P. v. Komaraju Gopala Krishna

Murthy reported in (2006) 9 SCC 752 and (4) Biranchi Narayan Mohanty v. State of Orissa [(2001) 9 SC 288] relevant Para 4.

25. I have given my anxious thought and consideration to the question of quantum of punishment that may be imposed on the appellant-accused, keeping in view the submission of the learned Counsel for the appellant-accused before me. Having regard to the facts and circumstances of the case, I am of the view that the interest of justice will be met if the following order is passed:

26. Accordingly, the appeal is partly allowed. The sentence of R.I. imposed on the appellant-accused Jashwant Dudabhai Gohil for the offences punishable under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act,1947 as also under Section 161 of the Indian Penal Code are ordered to be reduced to 4 months R.I. The sentence of fine on both the counts shall remain unaltered. Both the substantive sentences shall run concurrently. Bail bonds of the appellant-accused shall stand cancelled. The appellant-accused is directed to surrender before the jail authority within eight weeks from the date of receipt of the writ of this judgment. Muddamal articles be disposed of in terms of the directions given by the learned trial Judge in the impugned judgment.

(M.D.Shh,J.)

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